

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2010-02

December 29, 2010

APPLICATION OF ANDROSCOGGIN VALLEY REGIONAL REFUSE
DISPOSAL DISTRICT FOR EXEMPTION FROM THE APPROVAL
AND CERTIFICATE REQUIREMENTS OF RSA 162-H

**DECISION AND ORDER GRANTING EXEMPTION FROM THE APPROVAL
AND CERTIFICATE REQUIREMENTS OF RSA 162-H**

I. INTRODUCTION

The Androscoggin Valley Regional Refuse Disposal District (AVRRDD) intends to construct and operate a combined landfill gas and natural gas pipeline facility designed to transport a combination of landfill gas (LFG) and natural gas from the Mt. Carberry Landfill in Success, Coos County, New Hampshire, to a paper mill located in Gorham, Coos County, New Hampshire, frequently referred to as the Fraser Mill. On September 3, 2010, AVRRDD, pursuant to RSA 162-H:4, IV, filed an Application for Exemption from the Approval and Certificate Requirements of RSA 162-H (Application).¹ On September 22, 2010, the Committee, through counsel, requested additional information from AVRRDD. On October 13, 2010, AVRRDD responded to the Committee's requests.²

AVRRDD is a solid waste management district as defined by RSA 53-B, that provides refuse and disposal services for ten communities located in Coos County. AVRRDD operates a landfill facility located in Success, New Hampshire, commonly known as the Mt. Carberry Landfill. The Mt. Carberry Landfill has an existing system of

¹ References to the Application shall be cited with page number as Application, p. ____.

² References to AVRRDD's responses to the Committee's requests will be cited by page number as Responses, p. ____ or by exhibit number as Response Exh. ____.

wells, piping and pumps that collect methane gas and transport it to the east end of the facility to be flared off. The Mt. Carberry Landfill operation currently operates under an Air Permit issued by the Department of Environmental Services, Air Resources Division, pursuant to RSA 125-C:11.

AVRRDD's proposed LFG/natural gas pipeline project as proposed in the Application included the following components:

1. A landfill gas processing facility and associated compressor, dehydration unit, flares, and LFG meter at the eastern end of the Mt. Carberry Landfill located in Success, Coos County;
2. A natural gas metering and pressure regulation station (M&R Station) on AVRRDD property located in Berlin, Coos County, and near the existing Portland Natural Gas Transmission System (PNGTS) pipeline;
3. An approximate 11,300-foot-long, buried 8-inch-diameter High Density Poly Ethylene (HDPE) LFG pipeline from the Landfill to the M&R Station in Berlin;
4. An approximate 350 foot-long, 2-inch diameter lateral pipeline from the existing PNGTS mainline pipeline to the M&R Station;
5. An approximate 470-foot-long, buried 8-inch-diameter HDPE mixed LFG and natural gas pipeline from the M&R Station to the Androscoggin River;
6. An approximate 300-foot-long, 8-inch-diameter segment of coated steel pipeline crossing the abandoned railroad bridge over the Androscoggin River;
7. An approximate 2,500-foot-long, buried 8-inch-diameter HDPE mixed LFG and natural gas pipeline from the west end of the Androscoggin River crossing to the Gorham paper mill.

See, Application, p. 2. (Together the components will be referred to as the Project.) The Project will be located entirely on property owned by AVRRDD, Great Lakes Hydro America, LLC (Great Lakes) and Fraser Papers or their successors. Application, p. 5. While the Project will combine both LFG and natural gas, AVRRDD will sell only LFG and the owners of the mill will purchase natural gas from suppliers on the PNGTS pipeline. See, Application, p. 3. However, AVRRDD will own the entire project. See, Application, p. 3.

AVRRDD will obtain easements from Great Lakes and Fraser (or its successor) for the construction and operation of the Project.

The Project will be constructed pursuant to a design/build process, thus leaving flexibility in the exact dimensions and precise locations of the components of the Project. See, Responses, pp. 4-7. Since the filing of the Application, AVRRDD has informed the Committee that adjustments have been made to the size and dimensions of some of the components of the project. The LFG processing facility, associated compressor, dehydration unit, associated flares and meters will be located at the eastern end of the Mt. Carberry Landfill near the existing gas blower and flare system. See, Responses, pp. 3-4. The LFG pipeline will run from the LFG processing facility in a westerly direction along a route that generally passes behind the existing landfill operations garage and generally follows and is adjacent to an existing landfill leachate gravity pipeline and a gravel access road. While the exact route of this portion of the pipeline has not been designated, it is expected to run between 10,650 feet and 11,300 feet in length to an area of undeveloped land where the M&R Station will be constructed. See, Responses, p. 4. The M&R station will be located on undeveloped land owned by AVRRDD, west of the access road for the City of Berlin water pollution control facility located off of Shelby Street. The M&R station will include flow control and pressure regulation, including overpressure protection, and shall be designed and constructed in accordance with PNGTS pipeline requirements. See, Responses, p. 5. A lateral pipeline will run from the existing PNGTS transmission line to the M&R station, crossing existing undeveloped land owned by AVRRDD. The lateral pipeline has not yet been precisely located but is expected to run between 340 and 675 feet to the M&R station. See, Responses, p. 5. The lateral pipe will be owned by PNGTS. The main pipeline will then run from the outlet side of the M&R Station across property owned by AVRRDD and Great Lakes for a distance of approximately 470 to 850 feet, crossing under

the existing roadway to the Berlin water pollution control facility located off of Shelby Street in and adjacent to abandoned railroad tracks until it meets the eastern end of an abandoned railroad bridge owned by Fraser. See, Responses, pp. 5-6. The pipeline will then transition to a 300 foot long steel coated pipe crossing the abandoned railroad bridge over the Androscoggin River. At the west end of the bridge, the pipeline will transition to 8 inch diameter HDPE and travel for approximately 2,500 feet to the Fraser mill. See, Responses, p. 6.

AVRRDD filed its Application on September 3, 2010. On September 22, 2010, the Committee, through counsel, requested additional information regarding the project. AVRRDD provided additional information on October 13, 2010. On November 22, 2010, the Committee conducted a site visit and, to the extent practical, followed the route of the proposed pipeline. On the same day, the Committee held a public meeting and a public information hearing in Berlin. At the public meeting, the Committee received additional information regarding the Project. AVRRDD notified the Committee that R.H. White Construction Co., Inc., had been selected as the general contractor for the Project, but the contract had not yet been awarded or finalized. Public Meeting Tr., p. 11.³ AVRRDD also updated its estimates of pipe lengths and diameters and explained in more detail the design/build process. Additionally, AVRRDD reported that the wetlands delineation work had been completed and that all delineated wetlands would be included in the application for a Wetlands Permit. Finally, the Committee was advised that the sale of the Fraser Mill to the purchaser known as MerchantBanc had not materialized but that a substitute

³ References to the public meeting will be cited by page number as Public Meeting Tr., p. _____. References to the public information hearing will be cited by page number as Public Information Tr., p. ____.

purchaser, Consulting and Contracting,⁴ had been identified. See, Public Meeting Tr., p. 13.

In addition to the public meeting, a public hearing was held in Berlin. At the public hearing, the Committee heard from three speakers from the public. The Project was supported by Thomas McCue. Mr. McCue is a Berlin City Councilor and the ex-officio member of the Berlin Planning Board, as well as the City's representative to AVRDD. See, Public Information Tr., p. 43. During the public session, the Committee also heard from Paul Grenier, Mayor of the City of Berlin. Mayor Grenier strongly supports the Project and urged the Committee to exempt the Project in a timely fashion. See, Public Information Tr., p. 44. Finally, the Committee heard from Guy Lopez. Mr. Lopez is a Berlin resident who has worked in the Fraser Mill for 34 years. He spoke on behalf of a work force of approximately 240 current employees of the mill. Mr. Lopez strongly supported the Project and urged the Committee to exempt the Project from the requirements of RSA 162-H. See, Public Information Tr., p. 47. The Committee heard no public comments against exemption. The Committee has not received any written comments from the public regarding the Application.

Upon conclusion of the public hearing, the Committee went into a deliberative session. Upon a motion made by Commissioner Below and seconded by Director Scott, the Committee unanimously voted to exempt the Project from the certification requirements and provisions of RSA 162-H. The Committee also instructed counsel to prepare a decision and order memorializing its action.

⁴ Subsequent to the public meeting and public information hearing the Committee was advised that purchase of the mill by M&M Consulting did not occur. However, on December 16, 2010, the mill was purchased by Counsel RB Capital. The sale and purchase of the mill was conducted under the supervision of a bankruptcy court proceeding.

II. STATUTORY CRITERIA FOR EXEMPTION

RSA 162-H normally requires that all aspects of an application to construct and operate an energy facility be reviewed by the Site Evaluation Committee. Site Evaluation Committee review supplants consideration of a project by numerous state agencies and municipalities under various state and local laws and centralizes consideration and regulation of proposed energy facilities with the Committee. It is the purpose of RSA 162-H to insure that the siting, construction, and operation of energy facilities be “treated as a significant aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion.” RSA 162-H: 1, I. In some circumstances, the Committee may exempt an Application from the approval and certificate provisions of this statute. See, RSA 162-H: 4, IV. It should be noted that exemption from the Application and approval process before the Site Evaluation Committee does not exempt an applicant from regulation of the proposed project. An applicant who has been granted an exemption by the Committee is still subject to all applicable federal, state and local regulations and permitting requirements.

RSA 162-H:4, IV, grants the Committee the discretion to exempt an Application from the statutory process if it determines that other existing statutes provide adequate protection of the objectives set forth in RSA 162-H:1. The discretion of the Committee is statutorily circumscribed by the four requirements set forth below. The Committee must find that an Application satisfies all four requirements before it may grant an exemption from the statutory requirements of RSA 162-H: 4:

- (a) existing state statutes, state agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1;
- (b) a review of the Application reveals that consideration of the Application by only selected agencies represented on the Committee is required and that the objectives of RSA 162-H:1

can be met by those agencies without exercising the provisions of RSA 162-H;

- (c) response to the Application from the general public indicates that the objectives of RSA 162-H:1 are met by through individual review processes of the participating agencies; and,
- (d) all environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.

III. THE REQUEST FOR EXEMPTION

AVRRDD asserts that the Project meets the statutory criteria for exemption.

AVRRDD argues that because the Project will be constructed on private property owned by AVRRDD, Fraser (or its successor) and Great Lakes, and because the pipeline will, for the most part, follow an existing leachate line and gravel roadway, existing statutes and rules ensure that the objectives of RSA 162-H:1 will be met. AVRRDD also points out that the Project will be subject to regulation by the New Hampshire Department of Environmental Services for the purposes of air permitting, wetlands permitting and landfill regulation. The Project has already received an exemption from the requirement for an alteration of terrain permit. Additionally, AVRRDD asserts that the New Hampshire Public Utilities Commission must approve the bridge crossing and will regulate safety of the pipeline. Moreover, the Applicant points out that the municipalities of Berlin, Gorham and Success each have appropriate governmental agencies, rules, and regulations that will safeguard the objectives of RSA 162-H:1. AVRRDD has consulted with the Division of Historical Resources and obtained a ruling that historic resources will not be impacted by the Project. Finally, AVRRDD has consulted with the New Hampshire Natural Heritage Bureau which determined that there are no rare species or natural communities expected to sustain impacts within the Project area. In support of its petition, AVRRDD also indicates that the local community is broadly supportive of the Project and that all of the

environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.

In addition to the foregoing, AVRRDD points out that the mill in Gorham, until recently, employed approximately 240 people and that the timely siting and construction of the Project is extremely important to the replacement of the use of No. 6 fuel oil at the mill. The replacement of No. 6 fuel oil at the mill will significantly decrease the costs of operating the mill and, it is hoped, help to provide support of efforts to re-open the mill and re-employ the majority of individuals who have lost their employment as a result of the shut down of the mill. The Project will reduce the flaring of LFG at the landfill and reduce the emissions created by burning No. 6 fuel oil at the Gorham mill. As a result the project will provide an environmental benefit to the region.

IV. CONSIDERATION OF STATUTORY CRITERIA FOR EXEMPTION PURSUANT TO RSA 162-H: 4, IV

After comprehensive review of AVRRDD's Application, the additional information provided in writing, its presentation before the Committee, and the response of the public to the request for an exemption, the Committee has determined to exercise its discretion to exempt this Application from the statutory site evaluation process. In making this decision, the Committee has considered each of the statutory requirements for exemption and the representations and commitments made by AVRRDD.

A. Existing State Statutes, State Agency Rules or Municipal Ordinances Provide Adequate Means to Satisfy the Objectives of RSA 162-H: 1.

The pertinent objectives of RSA 162-H: 1 are summarized as follows:

- a) to maintain a balance between the environment and the need for new energy facilities;
- b) to avoid undue delay in the construction of necessary facilities, and;
- c) to ensure the siting, construction and operation of facilities are treated as a significant aspect of land use planning in which all environmental, technical and

economic issues are resolved in an integrated fashion so as to ensure an adequate and reliable supply of electric power in conformance with sound environmental utilization.

RSA 162-H:1, I & II.

Exemption from the statutory process of RSA 162-H does not relieve AVRRDD from regulation. Exemption permits AVRRDD to forego the centralized process provided by the Site Evaluation Committee under RSA 162-H and to obtain its permits directly from participating state agencies, the federal government (if applicable) and local boards. The Project will be subject to all federal statutes and regulations administered by the United States Environmental Protection Agency, the Pipeline and Hazardous Materials Safety Administration of the Department of Transportation and the Federal Energy Regulatory Commission. The New Hampshire Department of Environmental Services will administer the state environmental laws and regulations concerning the wetlands impacts of the Project and the air emissions. The Project has already obtained exemption from the alteration of terrain permitting process due to the linear nature of the Project. Public Meeting Tr., p. 18. It is also noted that the Mt. Carberry Landfill is already regulated by the Department of Environmental Services with respect to the existing gas collection, control system, and flaring system. The landfill is already regulated by the Department of Environmental Services pursuant to its solid waste management regulations. Public Meeting Tr., p. 42. Additionally, the Public Utilities Commission (PUC) has informally advised AVRRDD that the Project will not be subject to regulation as a public utility. In addition, AVRRDD has applied for and is in the process of obtaining a Public Utilities Commission permit for the pipeline to cross over state waters. Gas line safety issues will also be overseen by the Public Utilities Commission. See, Responses, Exh. E.

The Project is subject to the zoning, planning and building ordinances and regulations of the City of Berlin, the Town of Gorham and Coos County for the unincorporated place of Success. To the extent that construction will require transportation of heavy loads along state highways, those matters are generally determined by the Department of Transportation rules and regulations. Thus, the Committee finds that existing federal, state and local statutes, regulations and ordinances do provide adequate means to satisfy the objectives of RSA 162-H:1. The Project appears to implicate the authority of the Department of Environmental Services and the Public Utilities Commission. The laws administered by those agencies adequately protect the environment and the health, safety and welfare of the citizens of the state.

B. A Review of the Application Reveals That Consideration of the Application by Only Selected Agencies Represented on the Committee is Required and the Objectives of RSA 162-H:1 Can be Met by Those Agencies Without Exercising the Provisions of RSA 162-H.

It is clear from the record that the Department of Environmental Services and the Public Utilities Commission administer the laws and regulations most affecting this Project. The environmental, land use and safety aspects of the Project are all included within the auspices of either the Department of Environmental Services or the Public Utilities Commission. The Project is located on private property owned by AVRRDD, Fraser (or its successors), and Great Lakes Hydro. The pipeline corridor runs adjacent to an existing leachate line and a gravel roadway. All of the affected wetlands have been delineated by AVRRDD. The processing facility, the M&R Station, and the lateral pipeline from the existing PNGTS pipeline are all located away from abutting properties

and in areas that are not generally trafficked by the public. The pipeline ends at the existing mill building, a recognized industrial structure that has existed for years.

The construction of the pipeline will involve some wetland impacts. However, it is clear that such impacts can be monitored and regulated by the Department of Environmental Services. The Project has been exempted by the Department of Environmental Services from the requirements of the alteration of terrain program. The existing flare station is already regulated by the Air Resources Division of the Department of Environmental Services. The Public Utilities Commission has already informally advised the Applicant that it will not be regulated as a public utility. AVRRDD has filed and is well into the process of obtaining the Public Utilities Commission permit to cross over the Androscoggin River on the abandoned railroad bridge. As part of this process, there has been communication with the Safety Division of the Public Utilities Commission. AVRRDD asserts that communication with the Safety Division will continue throughout the construction and operation of the Project. Finally, to the extent that the construction of the Project might involve transportation of heavy loads for the purposes of construction, the Department of Transportation can adequately monitor and enforce state regulations with respect to the transportation of heavy loads. Given these findings, it is not necessary for the Committee to exercise the complete procedural apparatus of RSA 162-H in order to protect the statute's objectives.

C. Response to the Application From the General Public Indicates That the Objectives of RSA 162-H:1 Are Met Through the Individual Review Processes of the Participating Agencies.

The Committee held a public meeting and a public hearing with regard to the Application for exemption in Berlin on November 22, 2010. Notice of the hearing,

including notice of an opportunity to submit written comments, was published in the *New Hampshire Union Leader* on November 1, 2010, and in the *Berlin Daily Sun* on November 2, 2010. At the public meeting and the public hearing, no opposition was raised either to the Project itself or to the exemption process. No written comments were submitted by members of the public.

At the public hearing, City Councilor Thomas McCue, the Council's ex-officio representative to the Berlin Planning Board, and the Mayor of Berlin Paul Grenier strongly supported the Project and urged the timely exemption from the requirements of RSA 162-H. Likewise, Guy Lopez, a long time employee of the mill, speaking on behalf of his fellow mill workers, also strongly supported the Project and its exemption from the Application process.

In addition, AVRRDD has received zoning approval and a building permit from the Coos County Planning Board (for the unincorporated location of Success) for the LFG processing facility and pipelines to be located in Success. AVRRDD also received conditional site plan review approval from the City of Berlin for the M&R Station and the pipeline to be located in the City of Berlin. AVRRDD also received conditional site plan review approval from the Town of Gorham for the areas of the pipeline to be located in Gorham. AVRRDD has provided the Committee with copies of the aforementioned approvals. See, Responses, Exh. C. Public land use hearings were held in each of the affected communities. See, Public Information Tr., p. 22. It is also worth noting that AVRRDD itself is a political subdivision and public instrumentality of the state carrying out a public purpose and essential governmental function. See, RSA 53-B: 7. The municipal members of AVRRDD unanimously supported construction of the Project.

See, Public Information Tr. p. 44. The record in this docket clearly supports a finding that the public notice, public meetings and hearings as well as the response received from the general public throughout the pendency of this Application indicates that the statutory objectives of RSA 162-H:1 can be met through the individual review processes of the relevant state agencies and local boards within the communities affected.

D. All Environmental Impacts or Effects Are Adequately Regulated by Other Federal, State or Local Statutes, Rules or Ordinances.

The environmental effects of this Project concerning air emissions and wetland impacts and solid waste management appear to reside squarely within the jurisdiction of the Department of Environmental Services. In addition, the Project will be subject to the jurisdiction of the Public Utilities Commission for the water crossing and with respect to pipeline safety. Finally, the record indicates that the Project is subject to local zoning, planning and building ordinances. Under these circumstances, the Committee finds that the environmental impacts and effects of the Project are adequately regulated by the aforementioned state and local agencies.

IV. CONCLUSION

The Application before the Committee presents a set of circumstances that warrants an exemption from the statutory site evaluation process set forth in RSA 162-H. While there will be some wetland impacts and air emissions, these matters are most properly monitored and regulated through the Department of Environmental Services. Likewise, the water crossing and pipeline safety issues will be monitored and regulated by the Public Utilities Commission. Finally, the zoning, planning and building ordinances of the local communities provide sufficient safeguard that environmental and safety impacts are adequately regulated. Under these circumstances, the Committee

finds that the statutory criteria for exemption set forth at RSA 162-H: 4, IV have been met. Therefore, the Committee will exercise its discretion and grant AVRRDD an exemption from the statutory process of RSA 162-H for the Project contained in its Application which has been docketed as No. 2010-02. Nothing in this Order shall be interpreted or construed to relieve AVRRDD from its obligation to comply with any and all applicable laws, statutes, ordinances, regulations, or other authority other than RSA 162-H.

ORDER

WHEREAS, the Androscoggin Valley Regional Refuse Disposal District has filed an Application for exemption from the requirements of RSA 162-H pertaining to the proposed siting, construction, installation and operation of a landfill gas and natural gas energy facility and pipeline; and,

WHEREAS, the Androscoggin Valley Regional Refuse Disposal District's proposed facilities will process landfill gases from the Mt. Carberry Landfill in Success, New Hampshire and transport them to facilities located at the Fraser Mill in Gorham, New Hampshire where the combusted gases will generate thermal energy for the benefit of the Fraser Mill; and,

WHEREAS, the Site Evaluation Committee has determined that the Application contains sufficient information to carry out the purposes of RSA 162-H; and,

WHEREAS, the Site Evaluation Committee finds that existing state statutes, state agency rules and municipal ordinances provide adequate protection for the objectives of RSA 162-H: 1; and,

WHEREAS, the Site Evaluation Committee finds that consideration of the Application by only selected agencies represented on the Site Evaluation Committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H; and,

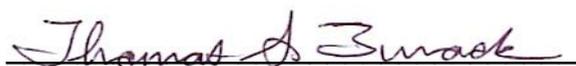
WHEREAS, a public meeting and public informational hearing was held in Berlin, New Hampshire on November 22, 2010 and the information obtained at said hearing was entirely supportive of the petition for exemption and no member of the public voiced opposition to the Application; and,

WHEREAS, all environmental impacts or effects of the proposed facility and pipeline are adequately regulated by federal, state or local statutes, rules, or ordinances.

IT IS HEREBY ORDERED: that the Application for exemption from the requirements of RSA 162-H as filed by the Androscoggin Valley Regional Refuse Disposal District is accepted as complete pursuant to RSA 162-H:4, IV; and,

FURTHER ORDERED, that the petition for exemption filed by the Androscoggin Valley Regional Refuse Disposal District is hereby GRANTED pursuant to RSA 162-H:4, IV.

SO ORDERED this 29th day of December, 2010.



Thomas S. Burack, Chairman
NH Site Evaluation Committee



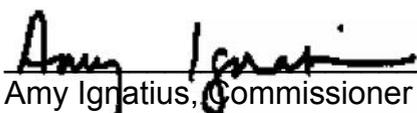
Robert Scott, Director
Air Resources Division



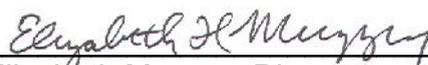
Harry Stewart, Director
Water Division



Clifton Below, Commissioner
Public Utilities Commission



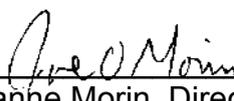
Amy Ignatius, Commissioner
Public Utilities Commission



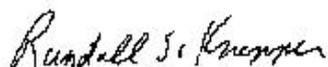
Elizabeth Muzzey, Director
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Brad Simpkins, Director
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Public Utilities Commission